

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MYRTIS PAULO HART,

Plaintiff,

v.

CV No. 21-1137 MV/CG

TRANSITION FOR LIVING,

Defendant.

ORDER TO CURE DEFICIENCIES

THIS MATTER is before the Court on Plaintiff Myrtis Paulo Hart's *pro se Complaint* (the "Complaint"), (Doc. 1), filed November 22, 2021, which consists of a Federal Tort Claims Act form. The Court finds that the Complaint is deficient because it is not in proper form, and Mr. Hart has not paid the \$402.00 filing fee or filed an Application to Proceed in the District Court Without Prepaying Fees and Costs in proper form.

It appears that Mr. Hart, who is incarcerated at the Curry County Adult Detention Center, is attempting to assert prisoner civil rights claims under 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). A civil rights complaint under 42 U.S.C. § 1983 or *Bivens* is the exclusive vehicle for vindication of substantive rights under the Constitution. See *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979); *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (claims against state actors must be brought under 42 U.S.C. § 1983).

The Complaint is not in proper form to assert civil rights claims and is not signed under penalty of perjury as required by FED. R. CIV. P. 11(a). In addition, under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to collect the federal filing fee from

Mr. Hart or authorize Mr. Hart to proceed without prepayment of the fee. Mr. Hart has not paid the \$402.00 filing fee or submitted an application to proceed under § 1915 in proper form.

Mr. Hart must cure the deficiencies if he wishes to pursue his claims. The deficiencies must be cured by no later than **January 3, 2022**. Mr. Hart must include the civil action number, CV 21-01137 MV/CG on all papers he files in this proceeding. If Mr. Hart fails to cure the deficiencies by **January 3, 2022**, the Court may dismiss this proceeding or strike the Complaint under FED. R. CIV. P. 11(a) without further notice.

IS THEREFORE ORDERED that, by no later than **January 3, 2022**, Plaintiff Myrtis Paulo Hart cure the deficiencies by (1) paying the \$402.00 filing fee or submitting an Application to Proceed in the District Court Without Prepaying Fees and Costs (including the required 6-month inmate account statement) and (2) filing a prisoner civil rights complaint in proper form.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to mail to Mr. Hart, together with a copy of this order, (1) two copies of an Application to Proceed in the District Court without Prepaying Fees and Costs under 28 U.S.C. § 1915, with instructions, and (2) a form prisoner civil rights complaint under 42 U.S.C. § 1983, with instructions.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', is written over a horizontal line.

THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE